

1 MINUTES

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3 The State Board of Elections board meeting was held on Monday, November 27,  
4 2017. The meeting was held in the West Reading Room in the Patrick Henry Building in  
5 Richmond, Virginia.

6 In attendance, representing the State Board of Elections (the Board) were James  
7 Alcorn, Chairman; Clara Belle Wheeler, Vice-Chair; and Singleton McAllister, Secretary.  
8 Also in attendance, representing the Department of Elections (ELECT) was Edgardo  
9 Cortés, Commissioner and Anna Birkenheier, Assistant Attorney General. Chairman  
10 Alcorn called the meeting to order at 1:20PM.

11 The purpose of this meeting was to continue the certification of the November  
12 General election. Before making a ruling on the certification, the Board decided to meet  
13 with legal counsel. The Board was unable to talk earlier without constituting a meeting,  
14 so chose this time to meet with counsel. No decisions would be made during this closed  
15 session, and afterwards, the meeting would open again. Chairman Alcorn *moved that the*  
16 *Board go into closed session, pursuant to Virginia Code §2.2-3711.07, for consultation*  
17 *with legal counsel regarding pending litigation and consultation with legal counsel*  
18 *regarding specific legal matters requiring the provision of legal counsel.* The Board was  
19 accompanied by Anna Birkenheier, Heather Hayes Lockman, and John Daniels from the  
20 Attorney General's Office, as well as Commissioner Cortés. Secretary McAllister  
21 seconded the motion. Vice Chair Wheeler abstained. The motion carried 2-0-1. The Board  
22 went into closed session at 1:22PM.

23 The Board re-opened the meeting at 2:18PM. Chairman Alcorn *moved the Board*  
24 *to reconvene in open session.* The Board took a roll call vote, certifying to the best of each  
25 member's knowledge that 1) only public business matters lawfully exempt from open  
26 meeting requirements under this chapter, and 2) only such public business matters as were  
27 identified in the motion by which the closed meeting was convened were heard, discussed,  
28 or considered in the meeting by the public body. Nikki Clemons, clerk, conducted a roll  
29 call vote. Chairman Alcorn voted yea. Vice Chair Wheeler voted yea. Secretary  
30 McAllister voted yea.

31 The Board did not accept public testimony or comment during the meeting.  
32 Chairman Alcorn said the Board normally held a de-brief meeting after certification where  
33 they would discuss lessons learned and public comment would be held. The Chairman  
34 read a statement to recap where the Board stood on this decision. Between election day on  
35 November 7 and the third Monday following that election when the Board met pursuant to  
36 §24.2-679 to ascertain the results of the November election, two lawsuits were filed  
37 regarding the House of Delegates election in House districts 28 and 88. One of the lawsuits  
38 named the Board and ELECT as defendants. The lawsuit alleged that 55 absentee ballots  
39 voted by “veterans” were not counted by the electoral board. A hearing was held on  
40 November 17 in the Eastern District of Virginia, Alexandria division. Judge Hilton  
41 presided. The lawsuit was brought by the House Democratic Caucus, and the House  
42 Republican Caucus sought to intervene. The intervention was granted. After hearing from  
43 all parties, Judge Hilton denied the relief requested to count the 55 absentee ballots, as  
44 there was no evidence to prove the ballots were received by the local registrar’s office by  
45 7 p.m. on November 7. It appeared to be a problem with the mail service. During the  
46 investigation conducted by ELECT of these ballots and the issues in litigation, ELECT  
47 continued to pursue alleged irregularities in both House districts 28 and 88. The allegations  
48 arose late on November 7, and attempts to more fully appreciate the allegations continued.

49 When the Board met on November 20, the Board certified the results of all  
50 statewide elections and all House of Delegates elections for all but districts 28 and 88.  
51 Additional litigation had not been filed at that time, but had been threatened by multiple  
52 different sources. The Board did not certify the elections on November 7 at that time due  
53 to the continuing investigation by ELECT of the potential irregularities, in part to the  
54 threatened litigation. The Board unanimously voted to postpone the certification until  
55 Wednesday, November 22. The litigation was filed in the Eastern District of Virginia,  
56 Alexandria division, on Tuesday, November 21. The litigation was emailed to counsel for  
57 the Board and ELECT at 5:36 p.m. that day. The litigation requested the issuance of a  
58 TRO and emergency hearing. Given the late receipt, the Board decided once again to  
59 postpone its meeting scheduled for Wednesday, November 22, until Monday, November  
60 27, as both Thursday and Friday were recognized state holidays. The Board determined

61 such postponement was consistent with its ability to adjourn for three days, under §24.2-  
62 679.

63 In response to the litigation filed the evening before, the court assigned the matter  
64 to Judge Ellis, who set a telephonic hearing for the issue on Wednesday, November 22 at  
65 3:30 p.m. At that time, the court heard from all parties, including counsels for the plaintiffs,  
66 individual voters who brought the litigation forward, the Board, ELECT, and after granting  
67 the motion for intervention, the Republican Party of Virginia. Judge Ellis ruled that  
68 because the plaintiffs had not met their burden in the issuance of a TRO, he would not grant  
69 it, but noted the case could go forward on an amended complaint if the party so chose.  
70 Judge Ellis further noted in his view that only the courts or the General Assembly, through  
71 a contest, could order a new election, and that action by the Board should run its course.

72 Chairman Alcorn stated the Board tried to create a fundamentally fair environment  
73 for the election and that there were steps taken and systems in place to create a fair system  
74 for all concerned. The Board recognized the limitations in time, resources, and staff  
75 members at ELECT, and commended the Department on its investigation into the matters.  
76 Due to some circumstances, the Chairman stated, some voters did vote in the wrong ballot.  
77 How or why was not yet clear, but, the Chairman said, it is clear that it happened. The  
78 Board did not have a statutory remedy to address the irregularities, and only the courts and  
79 General Assembly could order a proper remedy in the form of a contest, recount, or new  
80 election. In order for those remedies to commence, the Board had to exercise obligations  
81 under §24.2-679. Chairman Alcorn *moved the Board to certify the statements of results*  
82 *for House districts 28 and 88.* The Chairman did so knowing irregularities existed and that  
83 this certification only reflected that the statements of results before the Board reflected only  
84 the voters included in the certified abstracts provided by Stafford County and the City of  
85 Fredericksburg, under §24.2-679 (A). Chairman Alcorn further *moved they append to the*  
86 *statements of results the November 27, 2017 memorandum prepared by the Commissioner*  
87 *of Elections, which indicates the results of the Department's review into this matter to date.*

88 Vice Chair Wheeler noted the number of audience members, and requested the  
89 meeting open to public comment. The Chairman acknowledged the request, but asked to  
90 save the comments for when there could be a full conversation about the election issues  
91 that occurred. Secretary McAllister thanked ELECT for their work, and assured that the

Board gave a lot of thought to the issue of certification. The Secretary supported certification, and recognized the need to learn lessons so this would not happen again.

Chairman Alcorn noted the Board recognized the irregularities of the election, but did not have the authority to issue the appropriate remedies. Chairman Alcorn *moved the Board certify the results of the November 7, 2017 general election for the House districts 28 and 88*. Vice Chair Wheeler seconded the motion, and the motion passed unanimously.

The Board signed the necessary paperwork after the meeting. Vice Chair Wheeler hoped for a speedy resolution to the issue, and that the next meeting have public comment for audience members to share concerns with the Board.

Chairman Alcorn then moved to adjourn the meeting. Vice Chair Wheeler seconded the motion, and the motion passed unanimously. The meeting was adjourned at approximately 2:30PM. The Board did not set the date and time of its next meeting.

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Secretary

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Chair

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Vice Chair